

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION
3 IN THE MATTER OF:)
4 LEVEL 3 COMMUNICATIONS, INC.,)
5) No. 00 -0332
6 Petition for arbitration)
7 pursuant to Section 252(b) of)
8 the Telecommunications Act of)
9 1996 to establish an)
10 interconnection agreement with)
11 Illinois Bell Telephone)
12 Company d/b/a Ameritech)
13 Illinois.)
14 Chicago, Illinois
15 July 14, 2000

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18 Met pursuant to notice at 10:00 a.m.

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21 BEFORE:

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24 MS. EVE MORAN and MR. SHERWIN ZABAN,
25 Administrative Law Judges

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28 APPEARANCES:
29 MAYER, BROWN & PLATT, by
30 MR. DENNIS G. FRIEDMAN and
31 MR. J. TYSON COVEY
32 190 South LaSalle Street
33 Chicago, Illinois 60603
34 Appearing for Ameritech Illinois;

1 APPEARANCES (Continued)

2 MR. MICHAEL ROMANO
3 1025 Eldorado Boulevard
4 Broomfield, Colorado 80021
5 Appearing for Level 3;

6 NICHOLS & PENA, LLP, by
7 MR. ROGELIO E. PENA
8 2060 Broadway, Suite 200
9 Boulder, Colorado 80302
10 Appearing for Level 3;

11 MS. NORA NAUGHTON and
12 MR. G. DARRYL REED
13 160 North LaSalle, Suite C-800
14 Chicago, Illinois 60601
15 Appearing for Staff.

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21 SULLIVAN REPORTING COMPANY, by
22 Barbara A. Richmond, CSR

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I N D E X

Witnesses:	Direct	Cross	Re - direct	Re - cross	By Judge
Ms. Gavalas					

E X H I B I T S

Number	For Identification	In Evidence
Level 3 No. 1		
Level 3 No. 1.1		

1 (Whereupon Level 3
2 Exhibits Nos. 1.0 and 1.1 were
3 marked for identification
4 as of this date.)

5 JUDGE MORAN: Pursuant to the direction of the
6 Illinois Commerce Commission, I call Docket
7 No. 00-0332. This is an action brought by Level 3
8 Communications, LLC, a petition for arbitration
9 pursuant to Section 252 Sub B of the
10 Telecommunications Act of 1996 to establish an
11 interconnection agreement with Illinois Bell
12 Telephone Company, doing business as Ameritech
13 Illinois.

14 May I have the appearances for the
15 record, please.

16 MR. ROMANO: Appearing for petitioner, Michael
17 Romano, Level 3 Communications, LLC, 1025 Eldorado
18 Boulevard, Broomfield, Colorado 80021.

19 MR. PENA: Also appearing for Level 3, Rogelio
20 Pena with Nichols and Pena, 2060 Broadway, Suite
21 200, Boulder, Colorado 80302.

22 MR. FRIEDMAN: On behalf of Ameritech, Illinois,

1 Dennis Friedman, F-r-i-e-d-m-a-n, and Ty Covey,
2 C-o-v-e-y, Mayer, Brown and Platt, 190 South LaSalle
3 Street, Chicago 60603.

4 MS. NAUGHTON: Appearing on behalf of the staff
5 of the Illinois Commerce Commission, Nora Naughton,
6 N-a-u-g-h-t-o-n and Darryl Reed 160 North LaSalle,
7 Chicago, Illinois 60601.

8 JUDGE MORAN: Okay. Let the record reflect that
9 there are no other appearances. Before we start, I
10 believe that there was an off-the-record discussion
11 indicating that the parties had resolved some
12 issues. If one of the parties could please make
13 that have record now.

14 MR. FRIEDMAN: The parties have resolved Issue 26
15 concerning cross connect. And Issue 30 concerning
16 direct connecting to end offices.

17 JUDGE MORAN: And those issues are resolved in
18 their entirety.

19 MR. ROMANO: Yes, they are.

20 JUDGE MORAN: Thank you. And are there any other
21 preliminary matters that we need to discuss before
22 we begin cross examination?

1 MR. FRIEDMAN: None that we are aware of.

2 JUDGE MORAN: I've been informed that Mr. -- help
3 me.

4 MR. FRIEDMAN: Ms. Gavalas.

5 JUDGE MORAN: Ms. Gavalas, Mr. Gates, Mr. Hunt
6 and Dr. Harris will probably be testifying today.
7 Are those witnesses in the room as we speak?

8 MR. FRIEDMAN: Dr. Harris is, I think, en route.
9 He should land at O'Hare at about 11:00 or noon.

10 JUDGE MORAN: We have the other three witnesses
11 here. I would like to swear everybody in at one
12 time. Would you please raise your right hand.

13 (Witnesses sworn).

14 MR. ZABAN: Before we begin testimony, there was
15 a matter that came up yesterday regarding some
16 substituting some previously filed testimony for new
17 additional testimony. Has that already been done and
18 have you moved on the record to have the new
19 testimony admitted?

20 MR. FRIEDMAN: I was going to do that at the time
21 each witness' testimony came up. And I believe that
22 Mr. Friedman said there would be no objection to

1 that. And we have passed around to the parties, and
2 e-mailed last night the revised version of
3 Mr. Gates' testimony.

4 MR. ZABAN: And you've received it Mr. Friedman,
5 and you are satisfied it conforms to our agreement?

6 MR. FRIEDMAN: Yes, sir.

7 MR. ZABAN: We'll handle it at the time, I just
8 wanted to make sure we are on the record. We can
9 proceed.

10 JUDGE MORAN: And your first witness,
11 Mr. Romano.

12 MR. FRIEDMAN: Level 3 calls Andrea Gavalas.

13 JUDGE MORAN: Good morning.

14 ANDREA GAVALAS,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY

19 MR. ROMANO:

20 Q. Good morning, Ms. Gavalas. Will you please
21 state your name and business address for the record?

22 A. Andrea Gavalas, 1025 Eldorado Parkway,

1 Broomfield, Colorado 80021.

2 Q. And will you please state your position with
3 Level 3?

4 A. Senior Director, Network Deployment.

5 Q. Are you the same Andrea Gavalas that caused
6 to be filed in this docket a 19-page verified
7 statement marked currently Level 3 Exhibit 1.0?

8 A. Yes.

9 Q. And are you same Andrea Gavalas that caused
10 to be filed in this docket a 3-page supplemental
11 statement with an Attachment 1?

12 A. Yes.

13 Q. And was that testimony prepared or statement
14 prepared by you or at your direction?

15 A. Yes, they were.

16 Q. Do you have any corrections to make to
17 either of those statements?

18 A. No, I don't.

19 Q. If you were asked the same questions as were
20 posed in those statements today, would your answers
21 remain the same?

22 A. Yes, they would.

1 MR. ROMANO: At this time I move for the
2 admission of Level 3 Exhibits 1.0 and 1.1,
3 consisting of the verified statement of Andrea L.
4 Gavalas, and the supplemental verified statement.

5 JUDGE MORAN: Are there any objections?

6 MR. FRIEDMAN: No objection.

7 JUDGE MORAN: The statement of Andrea Gavalas and
8 the supplemental statement will be admitted into the
9 record subject to cross examination.

10 (Whereupon Level 3
11 Exhibits Nos. 1.0 and 1.1 were
12 admitted into evidence.)

13 JUDGE MORAN: And who wishes to begin cross
14 examination?

15 CROSS EXAMINATION

16 BY

17 MR. FRIEDMAN:

18 Q. Good morning again, Ms. Gavalas. How are
19 you?

20 A. Very well. How are you?

21 Q. I'm Dennis Friedman.

22 A. Nice to meet you, Dennis.

1 Q. Let me ask you first a couple of questions
2 about payload mapping. Could you please turn to
3 Page 16 of your verified statement, that is Exhibit
4 1.0.

5 I want to direct your attention to the
6 sentence that starts in Line 10, I'll read that
7 sentence and then ask you a question or two about
8 it. It says, if the pipe is divided up into
9 individual pieces of band width of 51.84 megabytes
10 per second each, it is channelized into synchronized
11 transport system Level 1's, and those systems can be
12 multiplexed up or down to get greater or lesser band
13 widths, for example DS 1's.

14 It's not entirely clear to me from that
15 sentence Ms. Gavalas if you are saying that when
16 channelizing is done that always involves
17 multiplexing, or whether you are saying it sometimes
18 involves multiplexing. My understanding is that it
19 always involves multiplexing either up or down; is
20 that correct?

21 A. Yes, that's my understanding.

22 Q. Level 3 raised the payload mapping issue in

1 an arbitration this year with Ameritech Illinois'
2 affiliate in California, correct?

3 A. That's correct.

4 Q. Level 3 ultimately dropped that issue,
5 right, in California?

6 A. That's my understanding.

7 Q. The same is true in Texas, that is to say
8 Level 3 raised the payload mapping subject and
9 eventually dropped it?

10 MR. ROMANO: Actually, I'm going to have to
11 object because that's not an appropriate
12 characterization of the Texas proceeding. In fact
13 in Texas Southwestern Bell settled it.

14 BY MR. FRIEDMAN:

15 Q. In any event, as I understand it, the thing
16 that makes Illinois different from Level 3's point
17 of view, different from California, let's say, is
18 has to do with an answer that Ameritech Illinois
19 gave to a data request that Level 3 posed to
20 Ameritech Illinois, correct?

21 A. Correct, because Ameritech answered that
22 they currently offer to themselves and other

1 carriers as part of a data request that we asked.

2 Q. And you want Ameritech Illinois to treat
3 Level 3 in this respect the same way it treats
4 itself and other carriers, correct?

5 A. Exactly.

6 Q. I think we can accommodate that. Let's go
7 to Issue 24, dark fiber. The parties have a
8 disagreement concerning the percentage of spare dark
9 fiber that Level 3 should be permitted to request at
10 any one time, correct?

11 A. Yes, that's one of the issues.

12 Q. And just for the sake of the record, this
13 issue having to do with the percentage of spare dark
14 fiber that Level 3 can order pertains to contract
15 Section 17.4.1 of the UNI Appendix; is that correct?

16 A. Yes, that's correct.

17 Q. Is it correct that the parties have agreed
18 that there will be a sentence in Section 17.4.1 that
19 says CLEC will not request any more than blank, and
20 I'm just saying blank for the moment, percent of
21 spare dark fiber contained in the requested segment?

22 A. That's what my copy of the marked up

1 agreement says, yes.

2 Q. And Level 3's position is that the number
3 that should go into the blank is 50 so that Level 3
4 could order up to 50 percent of spare dark fiber at
5 any one time, right?

6 A. That's correct.

7 Q. And Ameritech Illinois' position is the
8 number should be 25 percent so that Level 3 can
9 order only 25 percent of the spare dark fiber at any
10 one time, right?

11 A. Correct.

12 Q. You would agree, would you not, that
13 whatever the number is, it should be the same for
14 all other CLEC's in Illinois as it would be for
15 Level 3?

16 A. I can't say that I would agree with that.
17 I'm not sure of other CLEC's business plans or how
18 they build their network. Redundancy is very
19 important to Level 3. We want to insure that if we
20 are going to use a facility, there is another spare
21 facility there that if a fiber cut would occur we
22 can cover our customers and they don't experience

1 outages. I can't say that other CLEC's use that
2 same mentality.

3 Q. Would you agree with me that any CLEC that
4 wants to be able to avail itself of the same
5 percentage of Ameritech Illinois' spare dark fiber
6 as Level 3 should be able to do so?

7 A. Can you ask that question again, please?

8 MR. FRIEDMAN: Let me ask the reporter to read it
9 back. That might work. If it doesn't, I'll try it
10 again.

11 JUDGE MORAN: If you could read it back

12 (Whereupon, the record was
13 read as requested.)

14 THE WITNESS: Again, I'll have to go back to my
15 answer prior. It depends on what they're using it
16 for, why they are asking for additional fibers.
17 Ours is specifically addressing redundancy. They
18 could have other things that they are requesting
19 additional capacity for, so I can't answer that.

20 BY MR. FRIEDMAN:

21 Q. Just so we are clear on your position, what
22 I'm understanding now is that it's your position

1 that Level 3 should be permitted to order at any one
2 time 50 percent of the spare dark fiber that
3 Ameritech Illinois has in any segment, but that
4 other CLEC's in Illinois, even if they want that
5 same quantity, maybe should not be entitled to it if
6 their reasons are the same as Level 3's?

7 A. No, that's not true, that's not what I
8 meant. Yes, they should be able to -- if 50 percent
9 is in my agreement, I think they can opt into my
10 agreement, as I understand. So if they wanted that
11 percentage, they could get it by using my agreement.

12 Q. Forget about opting in, let's put opting in
13 to the side for the moment. Wouldn't you agree with
14 me that if you get 50 percent, any other CLEC in
15 Illinois that wants to have 50 percent in their
16 contract should be able to have it as well?

17 A. Yes, I agree.

18 Q. Now, as of today, Level 3 does not have any
19 plans at all to use dark fiber that it would obtain
20 from Ameritech Illinois; isn't that right?

21 A. I am not aware of any today. Tomorrow could
22 be different.

1 Q. How many residential customers does Level 3
2 have in Illinois?

3 A. Could you direct me to my testimony, please,
4 where you are referring to?

5 Q. I'm not referring to any page, I'm just
6 asking you how many residential customers.

7 MR. ROMANO: I'm going to object on the grounds
8 of relevancy. I don't see what that has to do with
9 any portion of what Ms. Gavalas has testified to
10 unless Mr. Friedman can tie it in.

11 MR. FRIEDMAN: I propose to ask a couple of very,
12 very basic background questions having to do with
13 the nature of what Level 3 does in this state. And
14 the answers bear on all sorts of issues. The two
15 questions I propose to ask, and I don't propose to
16 go any further than this, at least now until we dig
17 into some issue, are how many residential customers
18 in the state.

19 And then my second question would be, how
20 many customers do you have in Illinois to whom you
21 provide dial tone, residential or business.

22 MR. ZABAN: If she knows.

1 JUDGE MORAN: Yes, we'll allow those questions

2 BY MR. FRIEDMAN:

3 Q. The first question, then, is how many
4 residential customers does Level 3 have in Illinois?

5 A. That's difficult to answer because I sell
6 services to carriers who provide residential service
7 to customers and some of the carriers I sell to only
8 serve residential customers.

9 MR. ZABAN: Do you know the answers?

10 BY MR. FRIEDMAN:

11 Q. I can refocus this. Does Level 3 itself
12 have any residential customers?

13 A. Direct customers, no.

14 Q. Does Level 3 itself provide dial tone to any
15 Level 3 customer in Illinois, whether residential or
16 business?

17 A. At this time, no, but it is our future plan.

18 MR. ZABAN: The question is at this time. The
19 answer is no.

20 BY MR. FRIEDMAN:

21 Q. I would like to talk with you some about
22 Issue 27, which is the number of points of

1 interconnection.

2 MR. ZABAN: Do you have a page number on that,
3 Mr. Friedman?

4 MR. FRIEDMAN: In her testimony, I believe it's
5 Page 3. It's going to take me a minute to actually
6 get to her testimony.

7 BY MR. FRIEDMAN:

8 Q. Just to get our bearings on this issue,
9 Level 3's position is that the parties' agreement
10 should not require Level 3 to interconnect with
11 Ameritech Illinois at more than 1 point per LATA,
12 correct?

13 A. That is our position for terms of this
14 agreement, yes.

15 Q. And Ameritech Illinois' position has been
16 that Level 3 should be required to interconnect with
17 Ameritech Illinois' network at every tandem, at
18 every Ameritech Illinois tandem in a LATA, correct?

19 A. That's my understanding of what you
20 proposed.

21 Q. Now, one objection that you've made to
22 Ameritech Illinois' proposal has been that it would

1 require Level 3 to establish a point of
2 interconnection at an Ameritech Illinois tandem,
3 even if Level 3 was sending no traffic at all, or
4 just a little tiny bit of traffic through that
5 tandem, correct?

6 A. Our point when it comes to interconnection
7 is sound engineering principles. And we would look
8 to traffic to determine sound engineering
9 principles.

10 MR. FRIEDMAN: I'm going to move to strike that
11 answer, I don't think it was responsive to my
12 question.

13 MR. ZABAN: I'll sustain the objection.
14 Ms. Gavalas, listen to his question correctly, and
15 your counsel is going to have an opportunity to
16 clear up anything else you want to say, but right
17 now I need to have you just listen to Mr. Friedman's
18 questions and answer them directly.

19 BY MR. FRIEDMAN:

20 Q. My understanding is an objection that Level
21 3 has had to Ameritech Illinois' proposal of a point
22 of intersection for each tandem is that that would

1 require Level 3 to establish a point of
2 interconnection, even at Ameritech Illinois tandem
3 through which Level 3 is not sending any traffic, or
4 through which it is sending a little trickle of
5 traffic.

6 Am I correct that that has been one of
7 Level 3's objections?

8 A. That's my understanding.

9 Q. Are you aware that Ameritech Illinois
10 offered yesterday, to Level 3, to change its
11 proposal so that instead of Level 3 having to
12 establish a point of interconnection at every
13 tandem, Level 3 would have to establish a point of
14 interconnection only at those tandems through which
15 Level 3 is sending 24 trunks worth or more of
16 traffic on a stable basis. Are you aware of that
17 offer?

18 A. I'm aware of the first part of your offer.
19 I didn't hear the word stable in the way it was
20 interpreted to me but, yes, I am aware of that
21 offer.

22 Q. Let's look at your testimony, and by the

1 way, I believe I have no questions about your
2 supplemental testimony, so when I refer to your
3 testimony, unless I say otherwise, I am talking
4 about Exhibit 1.0, your initial testimony.

5 Let's look, starting on the bottom of the
6 Page 6, and then caring over to Page 7, where you
7 talk about what I understand to be another objection
8 that Level 3 has had to Ameritech Illinois'
9 proposal. On Page 6, starting on Line 16, you say
10 that Level 3 is permitted to order and turn up only
11 6 T1's's per day, right?

12 A. That's correct.

13 Q. And then you say that if you had to
14 establish a point of interconnection at every
15 Ameritech Illinois tandem, as Ameritech Illinois had
16 been requesting, it would take 15 months to do all
17 the trunk work necessary to get that done?

18 A. Correct.

19 Q. And then at the top of Page 7, starting in
20 the first line, you make your conclusion by saying
21 that if you had to establish a point of
22 interconnection at every tandem, you wouldn't then

1 be able to grow your network, because all of your
2 orders for trunks, during the 15 month transition
3 period, would have to be used to meet the point of
4 intersection requirement. So you wouldn't be able
5 to get any trunks for new customers, or additional
6 traffic for old customers, right?

7 A. Correct.

8 Q. Now, actually isn't it true that SBC
9 Ameritech guaranteed you on the record in Texas that
10 that would not happen?

11 A. In Texas?

12 MR. ZABAN: What happened in Texas is irrelevant
13 to these proceedings.

14 MR. FRIEDMAN: I'll rephrase.

15 MR. ZABAN: Mr. Romano, I don't mean to do your
16 job.

17 JUDGE MORAN: Let counsel explain how --

18 MR. FRIEDMAN: I can easily solve this by
19 rephrasing.

20 BY MR. FRIEDMAN:

21 Q. You understand, do you not, that Ameritech
22 Illinois, for purposes of the contract we're talking

1 about in Illinois, is prepared to agree that
2 whatever trunk work needs to be done to meet the
3 point of interconnection requirement will not count
4 against any trunks that Level 3 might want to order
5 for new business?

6 MR. ROMANO: I'm actually going to object to that
7 point because I never heard that proposal. When we
8 asked in Texas on the stand about this proposal, and
9 I know Texas isn't relevant here, but that's the
10 only time I heard that proposal before, Mr. Mendel
11 said he was not necessarily willing to put that
12 language into the contract to that affect.

13 MR. FRIEDMAN: The objection really isn't
14 appropriate. It's a perfectly fine question. If
15 the answer is no, to the witness' knowledge, she can
16 just say no.

17 MR. ROMANO: Unfortunately she wasn't privy to
18 all the discussions that went on in Texas.

19 JUDGE MORAN: On the other hand, I don't think we
20 should have counsel testifying to what went on.
21 That's my problem with that.

22 MR. ZABAN: As I understand the question phrased

1 by counsel, he has now phrased it as if it occurred
2 in Illinois. And I think your phrase was are you
3 aware that Ameritech in Illinois has. So it's kind
4 of like a hypothetical, and I think from that
5 standpoint, Mr. Romano, if she wants to treat it as
6 a hypothetical, she can. If she has never heard
7 that proposal before.

8 THE WITNESS: Hypothetically I've never heard of
9 that.

10 MR. ZABAN: You've got to answer it as if it were
11 true.

12 THE WITNESS: No.

13 MR. FRIEDMAN: May we go off the record for just
14 a moment?

15 (Whereupon, there was an
16 off-the-record discussion.)

17 BY MR. FRIEDMAN:

18 Q. Starting at the very bottom of Page 7 of
19 your testimony, Ms. Gavalas, and then carrying over
20 to the top of Page 8, you talk about factors that
21 you say should be considered to decide when an
22 additional point of interconnection should be

1 established in a LATA, right?

2 A. Yes.

3 Q. Let's talk some about those factors. As of
4 today Level 3 has one switch in the Chicago LATA,
5 true?

6 A. True.

7 Q. That switch is located a couple of blocks
8 away from here at 111 North Canal Street, right?

9 A. True.

10 Q. And Level 3 has, as of today one point of
11 interconnection with Ameritech Illinois in the
12 Chicago LATA, right?

13 A. True.

14 Q. And that point of interconnection is at an
15 Ameritech tandem switch which is about seven blocks
16 south of here at 520 South Federal, right?

17 A. I'm actually not familiar with the address
18 of the POI. I think it's the Wabash CO.

19 Q. It is referred to as the Wabash CO.

20 A. That was my understanding, so yes.

21 Q. So the way we exchange traffic today for the
22 entire Chicago LATA is that we bring the traffic,

1 wherever it's coming from, to our point of
2 interconnection with you at the Wabash tandem and we
3 hand the traffic off to you there at our point of
4 interconnection, right?

5 A. Correct, as requested by Ameritech.

6 Q. And I phrased that in terms of us handing
7 traffic to you, rather than the other way around,
8 because actually you don't originate any traffic on
9 your network that you hand off to us to terminate on
10 ours, right?

11 A. At this time, no.

12 Q. So we hand off this traffic to you at the
13 point of interconnection at our Wabash tandem and
14 then you carry it seven or eight blocks to your
15 switch on Canal Street?

16 A. Correct.

17 Q. Now, are you aware that one of the other
18 tandems that Ameritech Illinois has in the Chicago
19 tandem is in -- in the Chicago LATA is in LaGrange,
20 Illinois?

21 A. I'm not aware of that.

22 Q. Can you assume along with me for purposes of

1 some questions I'm going to ask you, that Ameritech
2 Illinois has a tandem switch in a place called
3 LaGrange, Illinois?

4 A. Yes.

5 Q. And will you also assume along with me, just
6 for the sake of discussion, that LaGrange is about
7 13 miles west from where we are now?

8 A. Subject to check, yes.

9 Q. Level 3 does not have a switch in LaGrange,
10 correct?

11 A. Correct.

12 Q. If Level 3 did have a switch in LaGrange,
13 would I be correct in thinking that that would make
14 Level 3 much, much more amenable than it is today to
15 having a point of interconnection with Ameritech
16 Illinois in LaGrange?

17 A. Not necessarily.

18 Q. So you are telling me -- well, let me just
19 change it a little bit. I don't know that this is
20 going to be enough to change your answer, but let's
21 give it a shot. Let's assume for the sake of
22 discussion that Level 3 has had a switch two blocks

1 away from the Ameritech Illinois switch in LaGrange.
2 Would that not weigh rather heavily as a
3 consideration in your mind in favor of a point of
4 interconnection in LaGrange?

5 A. No, my strongest inclination is based upon
6 traffic, not so much what equipment I have where.
7 If I had traffic warranting an additional point of
8 interconnection in LaGrange, we would definitely sit
9 down with Ameritech and discuss it.

10 Q. You wouldn't have a switch in LaGrange if
11 you didn't have traffic there, would you?

12 A. Not necessarily. It takes us a while to
13 turn up switches, it could take a while to get that
14 up and going and get a customer base established
15 before I had traffic.

16 Q. I understand what you are talking about.
17 Here's what I'm understanding, in light of your last
18 answers, and I would like you to tell me if I'm
19 right or wrong. What I'm understanding is that if
20 you had a switch in LaGrange, that factor would
21 weigh in favor of establishing a point of
22 interconnection with Ameritech and LaGrange, but

1 would not mean, in your mind, that it was clear that
2 a POI should be established; is that fair?

3 A. It's such a hypothetical. There are two
4 things that occur in a network, adding switches and
5 adding transport. Ameritech is more switch based,
6 I'm more transport based. I assume the nature of
7 your question is switch based because you're
8 representing Ameritech.

9 With my network it's transport and
10 switching, and then based upon the amount of traffic
11 used through those facilities we would sit down with
12 Ameritech, we hope. Ameritech has never asked us to
13 do that, so I can't use any kind of example to give
14 you. But we would assume that we would want to
15 discuss those things locally, and not put
16 restrictive language in the agreement to govern
17 those types of things.

18 Q. Let me try another one with you. Are you
19 aware of a town north of here called Northbrook ,
20 Illinois?

21 A. I've heard of Northbrook, Illinois.

22 Q. Are you aware of Ameritech Illinois having a

1 tandem switch there?

2 A. I'm not, subject to check I'll assume it's
3 true.

4 Q. Will you assume for purposes of our
5 discussion that Ameritech Illinois has a tandem
6 switch in Northbrook?

7 A. Yes.

8 Q. And are you willing to assume for the sake
9 of discussion, subject to check, that Northbrook is
10 about 25 miles north of here?

11 A. Yes, subject to check.

12 Q. Now, let's assume for whatever reason Level
13 3 finds itself in a position where it's going to be
14 generating a lot of traffic out of Northbrook, great
15 volume of traffic, maybe you have some wonderful new
16 business, can you assume that with me?

17 A. Yes.

18 Q. And let's also assume for whatever reason,
19 and I understand this is hypothetical, that that
20 happens next week, and that would mean that you
21 would need additional facilities from Ameritech
22 Illinois to handle this traffic, right?

1 A. That would mean as Ameritech's
2 responsibilities on the other side of the POI, they
3 would have to insure that I had the facilities to
4 transport that traffic. That you had the facilities
5 I'm sorry, to transport that traffic to me.

6 Q. Let's assume, for the sake of discussion,
7 that for whatever reason Ameritech Illinois was not
8 able, told you it was not able to put in the amount
9 of facilities that you needed to accommodate this
10 Northbrook traffic. And let's just assume also that
11 it's a legitimate reason, they can't put it in as
12 quick as you need it. Can you assume that?

13 A. I forecast to Ameritech twice a year, and so
14 that capacity would be forecasted, so when you say
15 legitimate reason, maybe you could draw me back to
16 my forecast, or are you saying it wasn't forecasted?

17 Q. Let's say you didn't forecast it, and
18 suddenly just a ton of business drops into your lap.

19 A. Okay, hypothetically, I didn't forecast it.

20 Q. So you call Ameritech, you say I need a
21 whole bunch of facilities I've got all this traffic
22 and Ameritech says, Geez -- and I need it next week

1 or the week after next, and Ameritech says, It's
2 going to take us four months.

3 If something like that should happen,
4 would that situation be one in which you would be
5 inclined to give serious consideration, at least, to
6 establishing a new point of interconnection with a
7 Ameritech in Northbrook?

8 A. Hypothetically to that situation, I don't
9 know if Ameritech would even give me those trunks
10 because they weren't forecasted. So I can't really
11 talk about the POI issue as it relates to your
12 question, because I think I would run into bigger
13 problems, let alone a POI, as it would relate to end
14 office hooks and tandem hooks to accommodate that
15 traffic. So I can't answer that question.

16 JUDGE MORAN: What if you put though exceptions
17 to the side. Just for purposes of this question?

18 THE WITNESS: So it is forecasted, and I forecast
19 by the month, so we tell Ameritech exactly when in
20 the month we need the traffic.

21 JUDGE MORAN: I understand, but I think in this
22 hypothetical we are assuming this was not

1 forecasted.

2 THE WITNESS: Level 3 would be willing to sit
3 down and talk with Ameritech. We would initiate
4 that at a local level as we currently do today.
5 That has never been brought up to Level 3, I can't
6 hypothetically tell you how that conversation would
7 occur. We turn up large customers daily, and we've
8 never been asked to bring up additional points of
9 interconnection. So if that's something we would
10 want to move forward with, we would love to sit down
11 with Ameritech and talk, if that was necessary.

12 But we prefer not to have restrictive
13 language in the agreement that governs it. I've
14 been in business for 18 months, they've been in
15 business for 100 years. So it takes me a while to
16 gain customers and bring up traffic. Our concern is
17 that if we have specific concentrated areas we would
18 definitely want to talk about that, but just making
19 it an arbitrary ruling where I don't have traffic is
20 our concern.

21 BY MR. FRIEDMAN:

22 Q. You referred a few minutes ago to

1 Ameritech's, I think you said switched based
2 architecture, or switch intensive architecture. And
3 that, I take it, is in contrast to what you would
4 think of as Level 3's facilities or transport based?

5 A. Yes.

6 Q. Do you happen to have readily available to
7 you the verified rebuttal statement of Craig Mendel?

8 A. I do.

9 Q. Could you please, and I'm not offering this
10 in evidence at this time, I'm simply going to ask
11 the witness some questions referring to a list in
12 here. Does anyone need it?

13 MR. ZABAN: What page are we on?

14 BY MR. FRIEDMAN:

15 Q. If you look, starting at the very bottom of
16 Page 3, Mr. Mendel says the following list shows the
17 rate centers for which Level 3 has reserved or
18 opened prefixes, and then there is a list on the top
19 of Page 4. Do you see that?

20 A. No.

21 Q. This is the rebuttal testimony?

22 A. I apologize, I have the verified statement.

1 Q. And I was directing your attention to the
2 bottom of Page 3, there is a sentence, the following
3 list shows the rate centers for which Level 3 has
4 reserved or opened prefixes, and then there is a
5 list at the top of Page 4. Now do you see that?

6 A. Yes, I do.

7 Q. First of all, do you have any basis to
8 disagree with Mr. Mendel's statement that that in
9 fact is a list of rate centers for which Level 3 has
10 reserved or opened prefixes?

11 A. I don't have any reason to disagree.

12 Q. Does Level 3 have facilities to the -- and
13 I'm starting at the bottom of the list, Mometz, does
14 Level 3 have facilities to that rate center of its
15 own?

16 A. No.

17 Q. To the McHenry rate center?

18 A. I don't know.

19 Q. Elburn?

20 A. I don't know.

21 Q. Sugar Grove?

22 A. I don't know.

1 Q. Plainfield?

2 A. I don't know.

3 Q. Geneva?

4 A. No.

5 Q. Waukegan?

6 MR. ROMANO: Maybe it might speed up the process

7 if he asked where she knew we had facilities?

8 JUDGE ZABAN: This is proper.

9 BY MR. FRIEDMAN:

10 Q. Waukegan?

11 A. Don't know.

12 Q. Joliet?

13 A. Don't know.

14 Q. Monee?

15 A. Don't know.

16 Q. Barrington?

17 A. Don't know.

18 Q. Wheaton?

19 A. Don't know?

20 Q. Homewood?

21 A. Don't know.

22 Q. And now we see why I started at the bottom,

1 Chicgozian (Phonetic) 11?

2 A. I don't know the geographic area that that
3 covers, so I don't know.

4 Q. Zone 11?

5 A. Don't know.

6 Q. Winnetka?

7 A. Don't know.

8 Q. Hinsdale?

9 A. Yes.

10 Q. Blue Island?

11 A. Don't know.

12 Q. Zone 1?

13 A. Don't know.

14 Q. How many rate centers are there in the
15 Chicago LATA for which you do know that Level 3 has
16 facilities?

17 A. The ones I mentioned here are the only ones
18 I know of, as it relates to facilities.

19 Q. Changing subjects, Issue 29, transit
20 traffic, which I believe you talk about in your
21 verified statement starting on Page 13. As I
22 understand it, transit traffic is traffic that is

1 not to or from an Ameritech Illinois customer,
2 right, for purposes of what we are talking about?

3 A. Correct.

4 Q. That is transit traffic between a Level 3
5 customer and a customer of some third carrier that
6 transits Ameritech Illinois' network in the middle?

7 A. Yes.

8 Q. Ameritech Illinois has agreed to transit
9 traffic for Level 3 up to a point, right?

10 A. Yes.

11 Q. And what Issue 29 is about, is it not, is at
12 what point Ameritech Illinois should be able to stop
13 transiting traffic between Level 3 and any one
14 particular third carrier, right?

15 A. Correct.

16 Q. We say, that is we Ameritech Illinois say,
17 that we are willing to transfer traffic between
18 Level 3 and a third carrier up to the point that the
19 volume of traffic between Level 3 and that third
20 carrier that is transiting our network hits 24
21 trunks worth, right?

22 A. Correct.

1 Q. That's our position. And you say that the
2 threshold should be 48 trunks, right?

3 A. Correct.

4 Q. That is your position is that the Commission
5 should require Ameritech Illinois to continue to
6 transit traffic between Level 3 and any given third
7 carrier up to the point that the volume of that
8 traffic hits 48 trunks worth, that's your position,
9 right?

10 A. Correct, a 48 trunk average.

11 Q. Now, whoever this third carrier is that we
12 are talking about, whoever it is, they have an
13 obligation, do they not, under Section 251 of the
14 Telecommunications Act, to interconnection with you
15 if you ask them to, a legal obligation?

16 A. Correct, within the time frame defined by
17 the Act.

18 Q. Now I take it from your testimony that Level
19 3 has encountered some problems getting carriers
20 like this third carrier that we are talking about to
21 enter into interconnection arrangements with it,
22 right?

1 A. Within speedy time frames, yes.

2 Q. And I think you talk about some of those
3 problems being in New Hampshire?

4 A. New Hampshire and New York, I believe.

5 Q. None in Illinois I take it?

6 A. None that I'm aware of right now.

7 Q. Do you have any reason to believe that if a
8 carrier in Illinois gave you a hard time negotiating
9 an interconnection agreement, do you have any reason
10 to believe that the Illinois Commerce Commission
11 would not require that carrier to live up to its
12 obligation under the Telecommunications Act?

13 A. I don't have a concern that they would help
14 us, my concern would be if they opened a proceeding,
15 as we've seen in other states, which takes a lengthy
16 period of time. If I rammed up to that 24,
17 Ameritech would should off my traffic and affect
18 those customers. That's my concern that if there
19 was a proceeding open and it took longer.

20 Q. Now, you know, do you not, that the
21 Telecommunications Act does not even require
22 Ameritech Illinois to transfer your traffic, do you

1 know that?

2 A. I'm not a lawyer, I don't know that part.

3 Q. Are you aware that the Illinois Commerce
4 Commission, in an arbitration decision, ruled that
5 Ameritech Illinois is not required by the 1996
6 Telecommunications Act to transit traffic?

7 A. I'm not aware of that.

8 JUDGE ZABAN: Do you have a site on which
9 arbitration that was Mr. Friedman?

10 MR. FRIEDMAN: I certainly intend to provide it
11 in the brief. My memory is -- I'm not sure if it
12 was AB 001 or AB 003/4. I think it was 3/4. Tie.

13 MR. COVEY: 96 AB 003/004. It was the
14 arbitration with AT&T in 1996.

15 MR. REED: Just so the record is clear, 96 AB 001
16 was TCG versus Ameritech Illinois.

17 BY MR. FRIEDMAN:

18 Q. Let's look at the bottom of Page 13 of your
19 testimony to see your objection as it is stated
20 there to have 24 trunk threshold that Ameritech
21 Illinois is proposing, and I'm starting on Line 21.
22 Are you there?

1 A. Yes.

2 Q. You say once traffic between two carriers
3 passes a concern threshold, Level 3 agrees that it
4 is more efficient for those carriers to exchange
5 traffic directly rather than through Ameritech
6 transit service.

7 However, Ameritech's provision could be
8 read to require that Level 3 interconnect directly
9 with the third party at the moment the traffic
10 requires 24 trunks. For example, a single event or
11 holiday calling pattern could trip Ameritech's
12 trigger, even though the traffic had otherwise not
13 approached a 24 trunk threshold. I've read that
14 correctly, haven't I?

15 A. You have.

16 Q. It is true, is it not, that Ameritech
17 Illinois offered you yesterday to change its
18 proposal on transiting so that the threshold would
19 be not the moment you hit 24 trunks, but would
20 rather be at your option, either a stable
21 requirement for 24 months or -- I'm sorry, for 24
22 trunks, or three consecutive months hitting the 24

1 trunk threshold. Are you aware of that offer?

2 A. Yes, it's my understanding that that was an
3 offer made.

4 Q. I want to ask you just a couple of questions
5 about Issue 31, which has to do with forecasting.
6 But let's just do a little bit of ground work first.

7 The parties do agree, do they not, that
8 Level 3 will from time to time provide forecasts to
9 Ameritech Illinois forecasting the amount of trunks
10 that Level 3 anticipates it is going to need at some
11 points down the line?

12 A. The current provision is to provide semi
13 annual forecasts, twice a year, if that's what you
14 meant by time to time.

15 Q. Just so everyone is clear, those forecasts
16 are not orders, right, they're forecasts?

17 A. Unfortunately, yes.

18 Q. So you make a forecast, for example saying I
19 anticipate in four months we are going to need X
20 trunks?

21 A. Yes.

22 Q. Then some time passes, and if your forecast

1 was completely accurate, after the passages of some
2 time, you would in fact order those trunks, right?

3 A. Yes.

4 Q. Now I am going to read you some language
5 that Level 3 is proposing for the parties agreement.
6 This is in Section 6.1 of Appendix ITR, and then I'm
7 going to ask you a question about it.

8 A. I am there.

9 Q. When I read the sentence I'm going to
10 substitute Ameritech Illinois for one place where it
11 says SBC 13 state, just to avoid confusion. The
12 sentence says, The parties agree that Ameritech
13 Illinois shall provide Level 3 written confirmation
14 that it has received Level 3's forecasts and include
15 such information in the ILEC's own forecasts?

16 A. I can't find where you are.

17 Q. Let me back up, because I should have
18 clarified something. What I'm reading is your
19 proposed language, not Ameritech's. And I believe
20 it's in Section 6.1 of Appendix ITR. It's the
21 second to last sentence.

22 A. My second to the last sentence starts, The

1 parties agree that each forecast provided be deemed
2 proprietary.

3 Q. I intentionally skipped over that. I'm
4 focusing on what comes right after that where it
5 says SBC 13 state, which translates into Ameritech
6 Illinois, right?

7 A. Correct.

8 Q. Shall provide Level 3 written confirmation
9 that it has received Level 3's forecasts and
10 included such information in the ILEC's own
11 forecast. The ILEC being Ameritech Illinois,
12 correct?

13 A. Correct.

14 Q. That's your proposal, right?

15 A. That's one of our proposals, yes.

16 Q. When you give us a forecast you want to get
17 back from us a written confirmation that we received
18 it, and included such information in the ILEC's,
19 that is our own forecast, right?

20 A. Correct.

21 Q. When you say included such information, what
22 do you mean?

1 A. We would request that Ameritech use that for
2 the planning purposes of expanding their network,
3 transport, switch hooks, et cetera. Use that
4 information as they plan, and then subsequently
5 build their network.

6 Q. How would you know if Ameritech Illinois did
7 that or not, if this language became part of the
8 contract, how would you know it?

9 A. We would hope that by giving us written
10 confirmation and that in good faith you would use
11 that information to plan your network.

12 Q. I take it, then, that if you give us a
13 forecast in January that says we are going to need a
14 thousand in April, and you want us to include that
15 information in our forecasts, that doesn't mean that
16 we would have to prepare as of February to have a
17 thousand for you, absolutely, necessarily, correct?

18 A. The title of the section is nonbinding
19 forecasts, so yes, your statement is true, those
20 forecasts are nonbinding, you are not required by
21 law to do anything with them.

22 Q. Issue 32, trunk blocking. Level 3 is asking

1 for the Commission to require parties agreement to
2 have a provision in this that would require
3 Ameritech to insure a trunk blocking level of .5
4 percent or less, right?

5 A. Correct.

6 Q. And we say we are prepared to have the trunk
7 blocking level be 1 percent, right?

8 A. Correct.

9 Q. Now, you are aware, are you not, that the 1
10 percent that Ameritech is proposing satisfies the
11 requirements for trunk blocking that are in the
12 Illinois Administrative Code?

13 A. I'm not familiar with the Illinois
14 Administrative Code.

15 Q. Did you read the testimony of any staff
16 witnesses in this case?

17 A. I believe I did.

18 Q. Do you recall reading the testimony of a
19 staff witness who said that the 1 percent that we
20 are proposing does satisfy the Illinois
21 Administrative Code?

22 A. I don't immediately recall that, but I'll

1 agree to it.

2 Q. Do you know of any carrier other than Level
3 3 that has asked Ameritech Illinois to beef up its
4 network so that it can provide .5 percent trunk
5 blocking, anyone besides you?

6 A. I'm not aware of any negotiation. I
7 wouldn't be aware of any other negotiations that
8 Ameritech is having with any carrier who wants to
9 better the network, no.

10 Q. If it should happen that the Commission
11 should decide to require Ameritech, notwithstanding
12 what the Illinois Administrative Code says to beef
13 up its network so it can hit your .5 percent trunk
14 blocking standard, are you prepared to compensate
15 Ameritech Illinois for the expenditures it would
16 have to make to accomplish that?

17 A. Is Ameritech Illinois willing to compensate
18 me for the expenditures that I have to make on my
19 network to do that?

20 MR. FRIEDMAN: I move to strike that as
21 nonresponsive.

22 THE WITNESS: No.

1 JUDGE MORAN: It will be stricken.

2 BY MR. FRIEDMAN:

3 Q. The answer to my question as I posed is no?

4 A. No.

5 Q. Issue 33 has to do with trunk utilization.

6 When you order additional trunks from Ameritech

7 Illinois, you pay Ameritech Illinois a nonrecurring

8 charge for turning up those trunks, but it's

9 Ameritech Illinois that bears the cost of the trunks
10 themselves, right?

11 A. On your side of the network, yes.

12 Q. So other than this nonrecurring, this one

13 time charge for turning up the trunks, it doesn't

14 cost you anything when you order Ameritech to put in

15 trunks on its side of the network, and Ameritech

16 does so?

17 A. I don't agree, no. So the answer to that

18 question would be no.

19 Q. Well, you incur expenses on your side of the

20 network?

21 A. Yes, we do.

22 Q. I'm talking about the trunks that we are

1 putting in at your request. With respect to those
2 trunks, we bear the cost of the trunks on our side
3 of the network, and you do not, right?

4 A. Yes, on your side of the network.

5 Q. Now, it's Level 3's position, if I
6 understand it, on Issue 33, that the parties
7 contract should require Ameritech to accept and
8 process orders for additional trunks from Level 3
9 whenever Level 3 reaches a point that the trunks it
10 currently has are operating at 50 percent
11 utilization, right?

12 A. Correct.

13 Q. So you are asking the Commission to require
14 Ameritech Illinois to put in additional trunks for
15 you at a point where the total traffic volume that
16 you are generating would have to double in order for
17 the trunks that you've already got from us to be
18 fully used, right?

19 A. Yes, based upon the provisioning limitations
20 that we currently have with Ameritech we feel that
21 50 percent would give us time to accommodate for
22 future growth on that trunk root because we could

1 only turn up six T1's per day.

2 Q. And Ameritech Illinois' position, of course,
3 is we should have to process your orders for
4 additional trunks only at that point where you are
5 utilizing the trunks you've already got at a 75
6 percent level?

7 A. Yes, that's your position.

8 Q. Under your proposal, let's assume that you
9 are operating at 52 percent utilization?

10 A. On a specific trunk group?

11 Q. Sure, on a specific trunk group. And you
12 order additional trunks, and we have to process the
13 order because somehow this provision finds its way
14 into the contract that says that we've got to do
15 that when you are 50 percent, okay? So we put up
16 additional trunks on our side of the network in
17 response to the order.

18 A. As you currently do today, yes.

19 Q. And we incurred the expense of those trunks,
20 right?

21 A. On your side of the network, yes.

22 Q. Assume that you wind up never using those

1 trunks because your traffic grows, but the growth is
2 accommodated by the 48 percent that you had left in
3 the existing trunks. So these new trunks that we
4 put up for you at our expense are just sitting
5 there, assume that with me, are you -- can you do
6 that?

7 A. I can.

8 Q. Are you prepared, then, to pay us for what
9 we spent on these trunks that we put up for you?

10 A. No, I believe -- no, I believe that I would
11 accommodate your accessible letter dated March 31st
12 that said I had to relinquish those trunks if they
13 were under utilized.

14 Q. So we get to take the trunks back?

15 A. Per a letter we received from Ameritech.

16 Q. Having sunk this money into them?

17 A. I pay for the nonrecurring charge, so I
18 believe I paid to have them turned up. If they are
19 not utilized then we would relinquish those to
20 Ameritech.

21 MR. FRIEDMAN: I have no further questions at
22 this time.

1 JUDGE MORAN: Why don't we take a 5 minute break
2 and then staff can do their cross.

3 (Whereupon, there was
4 a short break taken.)

5 JUDGE MORAN: We can go back on the record. Is
6 staff prepared with its cross? Please proceed.

7 CROSS EXAMINATION

8 BY

9 MS. NAUGHTON:

10 Q. I'm going to ask you some questions about
11 Issue 27, points of interconnection. And I thought
12 maybe just for a background, we could talk a little
13 bit about what the positions are of the parties.
14 Would you agree that Level 3 would like Ameritech to
15 require Level 3 to have only one POI in a LATA?

16 A. Upon initial market entry, yes.

17 Q. And that Ameritech's basic position is that
18 a POI should be located in each tandem in a LATA?

19 A. Correct, that's their position.

20 Q. Now we've heard today some testimony, or not
21 testimony, we've heard today from Dennis Friedman
22 that Ameritech has made an offer that POI's may be

1 located only at those tandems through which 24
2 trunks or more of traffic exist on a stable basis.
3 And you've now heard this offer?

4 A. Yes.

5 Q. My understanding from your testimony is that
6 you did not realize this was going to be offered on
7 a stable basis; is that correct?

8 A. Right. I heard the offer of the DS 1,
9 stable would imply peak or average. There would
10 probably be some conversations that need to happen
11 around that. But a DS 1 is a very small, small
12 portion of traffic. There would be such huge
13 investment on the side of Level 3, it would almost
14 be like you would open the market tomorrow, and
15 bring the new POI up the next day. You hope to when
16 you open a market, you would have enough traffic
17 there to get into service. A DS 1 is 24 simultaneous
18 calls.

19 Level 3 would like to propose to
20 Ameritech's proposal that it would be more like an
21 OC 12 worth of traffic at that tandem, average maybe
22 using their numbers of over a 3 month period, and

1 then Level 3 would work with Ameritech to establish
2 a POI. If a threshold had to be established, it's
3 still our position, to my understanding, that upon
4 initial market entry it should be only one point of
5 interconnection so it doesn't inhibit any CLEC from
6 getting into business.

7 Q. Let me stop you just to make sure I
8 understand what you've just said. Can you define for
9 me what OC 12 level of traffic is?

10 A. Optical carrier 12, 12 DS 3's in a circuit,
11 in a system, in a system.

12 Q. So the basic disagreement as it stands now
13 between the parties is how to define the level of
14 traffic?

15 A. Based upon the current proposal by
16 Ameritech, yes. I would think that if they are
17 willing to put a threshold, we should negotiate that
18 threshold to a higher, more realistic circuit
19 system.

20 Q. So right now the parties both agree, or at
21 least Level 3 agrees that as the traffic volume
22 increases, more than one POI in a tandem will be

1 required and you would agreeable to adding a POI, as
2 long as you could establish what that level of
3 traffic?

4 A. When you say will be required, it's still
5 our position that one point of interconnection is
6 probably very competitive for CLEC's and allows
7 people to get into business.

8 In the spirit of negotiations, in trying
9 to work this out, our local people and Ameritech's
10 local people speak daily about this stuff, daily
11 because we try to keep both of our networks up and
12 running. And that's what you have to do, I think, it
13 interconnect in a market.

14 Whatever those local people determine is
15 a good threshold, and work towards it is definitely
16 what we are interested in. We like to leave that
17 stuff up to the engineers.

18 Q. Let me be sure I'm clear on what you are
19 saying. Let's put aside right now the issue of what
20 that threshold is, because obviously you've got two
21 parties still working it out and still in
22 disagreement about that level.

1 Is it your position, though, that if that
2 level could be determined, that you would be willing
3 to revise the contract to set forth that a POI would
4 be required to be added once that level, whatever it
5 may be, is achieved?

6 A. Yes, if we could work out that level, yes.

7 Q. The reason I'm asking this is you've said
8 several times you are willing to sit down with
9 Ameritech. That doesn't necessarily mean the
10 contract will reflect that decision or --

11 A. We would be willing to put that in the
12 contract.

13 Q. This changes my one question. So the volume
14 of traffic that you would -- that you are now
15 referring to or at least negotiating is this OC 12?

16 A. Exactly.

17 Q. On Page 5, and again on Page 7 of your
18 verified statement, that's your initial statement,
19 you state that sound engineering principles may
20 eventually dictate that Level 3 add a new POI at
21 other Ameritech switches?

22 A. Correct.

1 Q. Now on Page 7, I hope I have the right
2 testimony, I know I may not have the revision. You
3 set forth certain factors.

4 A. What line are you on, please?

5 MS. NAUGHTON: Bottom of Page 7, top of Page 8.

6 MR. ROMANO: Is this in the verified statement,
7 not the supplemental statement?

8 MS. NAUGHTON: Hold on, I believe it's the
9 verified.

10 BY MS. NAUGHTON:

11 Q. Yeah, Page 7 and 8 of your first statement,
12 your initial verified statement. Do you see that?

13 A. I do.

14 Q. You are dictating a case by case analysis
15 where several factors are considered?

16 A. Yes. And we've just talked now about the
17 level of traffic and what both parties have decided
18 or the positions of both parties with respect to the
19 level of traffic that they would expect to require
20 another POI.

21 A. Yes.

22 Q. You've also mentioned some other factors in

1 this selection that I've cited.

2 A. Yes.

3 Q. Are the sound engineering principles you are
4 referring to, is that referring to the level of
5 traffic, and these other factors are additional
6 factors, are these part of the sound engineering
7 principles? I'm trying to get a sense of what we
8 need to resolve between the parties in order to
9 resolve this issue. Is it just level of traffic, or
10 is it also these other factors?

11 A. I would think we would want to look at --
12 all the factors go together, but in trying to split
13 it out I definitely understand where you are going
14 with your question. Threshold is one part. I think
15 the other thing we would want to look at is forward
16 looking forecasted traffic.

17 If the threshold established is where we
18 hit today, and we look at the forecast and there is
19 no more traffic warranted, I think those
20 conversations have -- no more traffic forecasted,
21 I'm sorry, I think we would have to sit down and
22 just talk about things like that to determine when a

1 new POI should be established, if that's what we
2 agreed to; how big it should be, making sure
3 Ameritech's network was prepared for it and my
4 network was prepared for it.

5 I'll site the example like we did in
6 Texas and California, the agreement didn't say we
7 needed multiple points of interconnection, but Level
8 3 agreed to put up multiple points of
9 interconnection in the network. I can't say that
10 every situation was the same, it was all case by
11 case. We went to the table with the other SBC
12 partners, sat down, agreed to what we would do,
13 insured that I didn't have to stop growing, that
14 they could accommodate my growth, brought up a new
15 POI very seamlessly. So we've proven that we can do
16 it.

17 Q. I can appreciate that there are a number of
18 other factors that ought to be considered. But for
19 purposes of trying to negotiate this contract, and
20 to try to give some certainty to both parties, is
21 there any way in which these factors can be
22 quantified so that Ameritech, and Level 3 can

1 recognize at some point that a POI will need be
2 established and apparently also how large that POI
3 should be?

4 A. Definitely, we can definitely do that. And
5 one other thing I would want to join in that
6 definition would be once we determine when it were
7 to happen, how it were to happen. So if we just
8 determined that an OC 12 is where we are putting up
9 a new POI, how would both parties go to do that. We
10 would want to get some language in the agreement
11 just to protect of us both from a timing and
12 ordering standpoint.

13 Q. How long it would take?

14 A. Right. I need to make sure that I am not
15 stopped from growing. I need to make sure that
16 while I bring up that POI, that could take four to
17 five months, to build facilities, to lease
18 facilities, bring up a colocation cage, I would have
19 to hope that there was colocation space available in
20 that access tandem to do that. Things like that I
21 would have to look at.

22 Q. Has Level 3 made any kind of offer with some

1 quantified factors?

2 A. No, not yet to Ameritech, as just receiving
3 their offer last night.

4 Q. You state on Pages 5 and 6 of your verified
5 statement, so that's the first, just back a couple
6 of pages, that Ameritech does not require more than
7 one POI, which is now located in Ameritech's Wabsh
8 tandem in LATA 350?

9 A. Yes.

10 Q. That's current, that's a current
11 requirement?

12 A. Yes.

13 Q. And Level 3, if you could confirm this,
14 Level 3 currently has only a single POI and one
15 tandem in the Chicago LATA, that's correct?

16 A. That's correct.

17 Q. How long has Level 3 and Ameritech been
18 interconnecting in LATA 350?

19 A. Approximately 18 months.

20 Q. What is the volume of traffic at the single
21 POI for that LATA?

22 A. I don't know exactly what the current volume

1 is. I can tell you that when we negotiated we
2 brought up an OC 48, we did a fiber meet. Ameritech
3 brought us strands of fiber, we delivered Ameritech
4 strands of fiber. We both agreed that based upon our
5 forecast that we should put up an OC 48. An OC 48
6 on their network and an OC 48 on hours.

7 I know we filled up two OC 12's, I don't
8 know how far we are into the third, and I could,
9 subject to check, I could get you those numbers if
10 need be.

11 Q. So, because I'm not an engineer, helping me
12 out, in an OC 48 you have four OC 12's?

13 A. Correct, I apologize.

14 Q. You said you filled up two OC 12's and
15 possibly some portion of a third?

16 A. I believe we've recently submitted orders to
17 Ameritech that haven't been turned up yet that may
18 take some of those circuits on that OC 12.

19 Q. How many calls are handled by an OC 12, do
20 you know what the volume is?

21 A. I don't have that algorithm with me,
22 circuits to minutes. Could I add one point of

1 clarification. As I was suggesting an OC 12 per
2 tandem, just because I filled up two doesn't mean
3 they are just as two tandems. There are several
4 tandems in the Chicago LATA.

5 Our proposal is once we've achieved OC 12
6 per a tandem, because that's what Ameritech is
7 asking for, a POI per tandem, once we have sustained
8 an OC 12's worth of traffic at the tandem, to use
9 Ameritech's suggestion, for three consecutive
10 months, an additional POI should be established
11 there.

12 The traffic that I currently have,
13 approximately two OC 12's worth, let's say, don't
14 come all from one tandem, I think there are
15 somewhere between 9 and 11 tandems in the Chicago
16 LATA. So they are split out amongst those tandems.

17 Q. Okay. And under the current figures that
18 you've just told us about, the Wabash tandem, the
19 POI is not yet, under your theory of an OC 12,
20 another POI is not required because you've got an OC
21 48?

22 A. Exactly. We would have to go look at the

1 traffic.

2 Q. Can you confirm for me what I thought your
3 answer was for Mr. Friedman's cross exam questions,
4 that there are no calls transported more than 15
5 miles from the Wabash tandem, which would be Level
6 3's transport?

7 A. I don't remember answering that question,
8 I'm sorry.

9 Q. It may be the way I'm phrasing it. I
10 thought you had said that the transport from the
11 Wabash tandem to your switch was under 15 miles?

12 A. I believe Mr. Friedman's point was that he
13 gave the mileage or the blocks from my gateway to
14 his Wabash CO.

15 Q. Is that correct, or are you not aware of
16 that?

17 A. No, I'm not aware.

18 Q. Or you don't know?

19 A. No, I don't know. I'm sorry, I don't know.

20 Q. This is going to be just rephrasing this
21 question, does Ameritech take all of your traffic
22 from the Wabash tandem to your gateway?

1 A. They deliver. Every user on Ameritech's
2 network that dials a phone number owned by Level 3,
3 they bring to the Wabash tandem, and that's where I
4 pick it up and haul it to my gateway where I switch
5 that call.

6 Q. So you do the transporting?

7 A. From the Wabash back to my gateway, that's
8 my responsibility, I'm on that side of the POI,
9 point of interconnection.

10 Q. And you don't know whether that's less than
11 15 miles?

12 MR. ZABAN: Ms. Naughton, I think you are a
13 little confused. I think the testimony or the
14 question Mr. Friedman asked is that their switch is
15 approximately 7 or 8 blocks away from Wabash. The 15
16 miles you are confused with was in his hypothetical,
17 he asked her to assume that a LaGrange was 15 miles.

18 MS. NAUGHTON: I'm not referring to Dennis'
19 hypothetical. There is testimony in the record from
20 Ameritech's witness that referred to a 15 mile.

21 MR. ZABAN: I don't recall it.

22 BY MS. NAUGHTON:

1 Q. I'm just curious -- I think you've answered
2 my question to the best of your ability, so I'm
3 perfectly fine with it.

4 You've also testified today that you
5 forecast twice a year to Ameritech your level of
6 traffic?

7 A. Yes.

8 Q. And that's currently under your current
9 interconnection agreement?

10 A. Yes, it is.

11 Q. Does Level 3 currently forecast having to
12 add a POI in the near future?

13 A. Per the terms of the agreement I'm currently
14 under it says I only ever have to have one possible
15 of interconnection. So no, we have not forecasted
16 one, nor has Ameritech come to us and stated that
17 they would want us to bring up another POI in that
18 LATA.

19 A. Let me rephrase that. Based upon your
20 proposal on the table of an OC 12, would the level
21 of traffic would require a POI, do your current
22 forecasting require you to have an additional POI.

1 A. I can't say for certain because I don't have
2 those forecasts with me. But I would assume with
3 the growth of our network, possibly towards the end
4 of this year, first quarter of next year, that may
5 be something that Ameritech wants us to do.

6 Q. And again that would be -- your basis for
7 determining the need for such additional POI would
8 be whether or not an OC 12 level of traffic had been
9 achieved, or -- and perhaps also some of these other
10 sound engineering factors that you refer to?

11 A. Yes.

12 Q. Let's turn to a slightly different topic.
13 Still under the same issue on Page 4 of your
14 verified statement, you state that Level 3 as a new
15 entrant must construct or lease or acquire entirely
16 new facilities for access to each POI, and therefore
17 that this issue, the point of interconnection issue,
18 has competitive implications as well.

19 A. Yes, most definitely.

20 Q. Wouldn't you agree that at some point for
21 CLEC to be competitive, the CLEC will need to
22 construct its own facilities?

1 A. There are a lot of different types of CLEC's
2 out there, facilities based and CLEC's that just
3 resell other people's services. So I don't know if
4 you necessarily have to build it yourself to be
5 competitive. There are carriers out there who you
6 can buy things from.

7 Q. So your position is that you really think
8 reselling -- you are making maybe a policy decision
9 about reselling as competitive activity of a CLEC?

10 A. I can only speak for what we are. We are a
11 facilities based provider, we are building our own
12 fiber networks, and it takes a while to do that to
13 get rights of way and permitting and that takes time
14 and money.

15 Q. Do you think in order to be competitive you
16 need to start constructing your own facilities, or
17 increase the construction of the facilities that you
18 have currently?

19 A. To meet my business plan I have to put fiber
20 in the ground.

21 Q. To be competitive?

22 A. Yes.

1 Q. So your comment that you've made is really
2 limited to new entrants?

3 A. Yes, that's all I'm speaking to is new
4 entrants like myself.

5 Q. In your opinion, when will a CLEC no longer
6 be considered a new entrant?

7 A. In my opinion when they have a good
8 percentages -- when the customer base in that market
9 that they are competing in, when more than half of
10 the users in that LATA use other than incumbent
11 services, I think that's competition. You want to
12 get as much of the customer base as you can. Not
13 that they don't use their services anymore, but you
14 have enough of them on your own.

15 Q. So your criteria would be how many of the
16 users in the LATA you have?

17 A. I think it goes to market penetration.

18 Q. It's not length of time?

19 A. Because of the implications of
20 interconnecting with an incumbent, I can only turn
21 up 6 T1's a day, let's say that's their rule, I
22 don't think you could put a length of time on there.

1 Because if you do put a length of time then you are
2 capping my growth at whatever that length of time is
3 times 6 T1's a day. Because we are held to
4 intervals and implications of how much we can do a
5 day, I don't think we can put a length of time on
6 it.

7 Q. Ameritech witness Craig Mendel at Page 3 to
8 4 of his supplemental testimony, it's Lines 23, and
9 30. Mr. Mendel testifies that Level 3 is large in
10 the Chicago LATA. He also says they are growing.
11 He also lists a number of forecasts, number of
12 trunks, I don't want to say because some of this is
13 proprietary.

14 A. Thank you.

15 Q. But I would like to ask you if you agree
16 with the figures and the quantities he cites in
17 those passages?

18 A. I do agree with those.

19 Q. Would you agree that those figures mean that
20 you are not a new entrant?

21 A. No, I don't agree with that.

22 Q. So you don't think the level of -- the

1 quantities and the levels that are cited there mean
2 that you are no longer a new entrant?

3 A. I don't necessarily think so. Maybe using a
4 broad definition, I compare myself to Ameritech who
5 I compete with, and I'm in no way large compared to
6 what their network is. So I would say I still am a
7 new entrant.

8 Q. So you disagree with his entire
9 characterization of Level 3 as large in the Chicago
10 LATA?

11 A. Because I don't know how big other CLEC's
12 are, why we try to keep these things under wraps, I
13 have no idea where I fall in the span of the
14 facilities based CLEC's in the Chicago area. So I
15 don't know how they consider me.

16 Q. Is it true that you agree with Ameritech,
17 this is a slightly different subject matter, is it
18 true that you agree with Ameritech that direct end
19 office trunking be established at some level of
20 service that is still to be agreed on?

21 A. I think we settled that.

22 Q. So now you have settled upon some level of

1 service, which I'm not aware of, but I'll take that
2 as a good sign, actually. So now that such trunking
3 is established, or such level of service, if the
4 trunking is established, will this alleviate the
5 need for direct trunking and POI of a tandem where
6 these direct end office trunks are located?

7 A. Those two things are essentially unrelated.
8 Related yet unrelated. A point of interconnection
9 is where is that point in the market where the two
10 carriers are going to meet. There are many tandems
11 and many more end offices in the Chicago LATA.

12 What we agreed to do, that if we have,
13 let's use the Wabash tandem and let's say it has 100
14 end offices serving off of it. Once one of those
15 end offices achieves a 24 trunk sustained traffic
16 pattern for three consecutive months Level 3 will
17 order direct trunking to that end office.

18 Ameritech will then, when that user picks
19 up the phone, dials my number, they will pick up
20 that call at the end office, and instead of having
21 to take it to their tandem and eat up valuable
22 tandem resources, that end office trunk will come

1 right back to the point of interconnection where
2 they will hand me the call. It still comes back to
3 the single place, but now it doesn't have to eat up
4 valuable tandem resources to do that.

5 Q. I only have one question about trunk
6 blocking, which is Issue 32. I guess we could
7 summarize the issue basically, you would like
8 blocking standards of .5 percent, is that point 05
9 is it?

10 A. .05 percent.

11 Q. And Ameritech would like to remain at 1
12 percent?

13 A. That's correct.

14 Q. If Ameritech were to agree to offer blocking
15 standards of .5 percent as you request, will only
16 the CLEC's using, and I'm quoting from your
17 testimony about what Level 3 has achieved, will only
18 the CLEC's using state of the art internet protocol
19 network benefit from this new standard?

20 A. In my opinion, no. Any CLEC who
21 interconnects with Ameritech would be able to offer
22 their customers a better quality of service. And

1 that's our point to this, is not to give Level 3
2 anything different, because we know that other
3 people can opt into our agreements, and we would
4 hope that would happen if we got this blocking
5 provision.

6 We are trying to encourage the industry
7 to go to less blocking, in this example 1 out of 100
8 calls get blocked. We think that's too high. And
9 it's very common, I don't know if you've tried to
10 dial things at busy hours in your area, but you can
11 get repeated busy signals. And what we are saying
12 is there shouldn't be repeated busy signals on
13 network. People should get through.

14 Q. Are you offering in your testimony that
15 other CLEC's may not care as much about this issue
16 because of their network and the way they are more
17 traditionally set up?

18 A. There are two reasons why they wouldn't
19 care. Number one, they wouldn't care about offering
20 their customers any better service because the
21 incumbents kind of set that 1 percent and everyone
22 has signed up for it, maybe they don't think they

1 can argue it.

2 The second reason why they wouldn't want
3 to do it is because they have an older technology,
4 that's going to make them enhance that technology,
5 add more pieces of equipment as it was a Ameritech's
6 position to do that. And we are saying that to
7 enhance service it is not always free, it does take
8 an investment on both sides of the network, on
9 Ameritech's side and my side to do that.

10 Q. That gets back to my original question, if
11 they don't have those enhancements, they may not
12 benefit from this level?

13 A. No, I think they would benefit.

14 Q. It would cost more?

15 A. It may cost more.

16 Q. In order to benefit?

17 A. Yes, exactly. In order for their customers
18 to benefit.

19 MS. NAUGHTON: That's it.

20 EXAMINATION

21 BY

22 JUDGE MORAN:

1 Q. I just want to explore a little bit with you
2 the notion of new entrant that staff has questioned
3 you about. Is it reasonable to say that there is a
4 certain amount of time when a business will make it
5 or not make it?

6 A. I guess that's a reasonable statement.

7 Q. And what would be a reasonable amount of
8 time in the CLEC world?

9 A. I don't know if I can answer to that. I'm
10 on the network side of the company, and I'm not sure
11 if I can speak to the business. It's kind of like a
12 business question, when do I think I've got enough
13 of the business. And from my side of the company, I
14 don't think I can answer that question.

15 Q. Can you tell me how long Level 3 has been in
16 business?

17 A. In the Chicago LATA?

18 Q. Yes.

19 A. About 18 months, approximately 18 months.

20 Q. And how long has it been in business in
21 other states?

22 A. No more than 18 months. Chicago is one of

1 our first 10 markets we opened.

2 Q. There was -- I can't remember the issue, so
3 excuse me, when you were talking about forecasts.
4 How good is Level 3's forecast record?

5 A. We have increased our accuracy. Obviously
6 I've been around for 18 months, not 100 years, so
7 when I go into a market and I want to sell my
8 services, I know what my services are, and I know
9 who I'm selling them to. What I don't know is which
10 Ameritech customers are going to be calling those
11 phone numbers.

12 So I have to get into business and then
13 every single day watch where my traffic is coming
14 from. I have to give a forecast two years in
15 advance.

16 Q. I understand you make this forecast, but at
17 a certain point you go back and --

18 A. Revise it, definitely.

19 Q. Or not even revise it, but check and see how
20 far you are on a point, or how far off you are on
21 your numbers?

22 A. Yes.

1 Q. And that information allows you to make
2 better future forecasts?

3 A. Most definitely.

4 Q. Have you been in business long enough to
5 check the accuracy of your forecasts?

6 A. I think we have. That is why we are
7 proposing to forecast four times a year instead of
8 twice a year. So we can get better.

9 Q. So you are closer to the actual numbers?

10 A. Exactly, a six month rolling forecast
11 updated four times a year.

12 JUDGE MORAN: I have no further questions.

13 EXAMINATION

14 BY

15 MR. ZABAN:

16 Q. On the issue of POI's, if Level 3
17 establishes an additional POI and a LATA, is it
18 possible that Level 3 would lease its required
19 facilities from Ameritech or another carriers?

20 A. That's possible. It would depend on how we
21 worked this out. My preference would be to use my
22 own facilities, but in several locations Ameritech's

1 network you have central offices that you can't get
2 colocation space in, or you are waiting many line.

3 Based upon what we negotiated, if my wait
4 wouldn't be short enough to get those facilities up
5 I would have to lease them from somebody until my
6 own were in place.

7 Q. And on Issue 29 concerning traffic,
8 considering Ameritech's proposal, when DS 1 level of
9 traffic is reached, Level 3 should interconnect
10 directly with the third party carrier. If the
11 agreement contains language to guarantee that the
12 transit trunks would not be turned off, or if Level
13 3 is guaranteed sufficient time to achieve
14 interconnection with a third party carrier, would
15 this make Ameritech's proposal acceptable?

16 A. Yes, definitely.

17 MR. ZABAN: I have no further questions.

18 JUDGE MORAN: Is there any redirect?

19 MR. ROMANO: I have just a few questions on
20 redirect, I think three or four.

21

22

1 REDIRECT EXAMINATION

2 BY

3 MR. ROMANO:

4 Q. Ms. Gavalas, do you recall the line of
5 questioning with Mr. Friedman with respect to Level
6 3's service plans, and residential customer base, et
7 cetera?

8 A. Yes, I do.

9 Q. Does Level 3 intend to offer outbound
10 service?

11 A. Yes, we do.

12 Q. And in what time frame or do you have an
13 estimate on that?

14 A. Our challenge with offering outbound
15 services is the technology we use is new technology
16 so we have to develop that new technology to do
17 that. It would be my goal that within the next year
18 we would begin offering outbound services in the
19 Chicago LATA.

20 Q. So likely sometime under the contract term
21 that we are looking at?

22 A. Most definitely under the contract term.

1 Q. Some questions on utilization as well. I
2 don't know if you recall Mr. Friemdan asking you
3 questions about who bears the costs of trunks?

4 A. Yes, I do.

5 Q. And I believe you said that Level 3 pays
6 NRC's?

7 A. Yes, I believe we do.

8 Q. Does Ameritech have to continue providing
9 trunks if Level 3 under utilizes them?

10 A. No, not per a letter they sent us on March
11 31st stating if a trunk group was under 75 percent
12 utilization they could take trunks away to bring
13 that utilization down to 35 percent. So even after
14 me bringing up the trunk in good faith that I would
15 use it. They could actually take the trunks away.
16 And since I pay an NRC I wouldn't want to put trunks
17 up that I wasn't going to use because that is going
18 to cost Level 3 additional monies.

19 Q. And when Ameritech takes back those trunks,
20 do you know what happens to those trunks?

21 A. I assume they are discontinued and put back
22 into a pot for other people to use or for Ameritech

1 to use.

2 Q. With respect to utilization, what does
3 Ameritech require today?

4 A. For under utilization or to augment?

5 Q. Both?

6 A. For under utilization their letter dated
7 March 31st says 75 percent. If it is a trunk group
8 is at 75 percent or less, it will be considered
9 under utilized, or maybe it's 74 percent or less is
10 under utilized. 75 or greater is utilized.

11 For augmentation of existing trunk groups
12 we are not currently held to any limitations by
13 Ameritech. The first time it came up were in these
14 negotiations. We can augment based upon a forecast
15 when we deem those trunks are necessary.

16 Q. And finally, has Ameritech raised any
17 problems or concerns in the filed with respect to
18 Level 3's utilization of trunks?

19 A. Not one, no.

20 MR. ROMANO: I have no further questions.

21 JUDGE MORAN: We are finish, I believe, with this
22 witness. So thank you very much for coming in. You

1 are excused.

2 (Witness excused.)

3 JUDGE MORAN: Now it's noon, so I don't know if
4 people want to break for lunch now, or if we want to
5 put on perhaps Mr. Gates. We have an estimate here
6 for a half hour.

7 MS. NAUGHTON: We should probably break.

8 JUDGE MORAN: Let's do that because our forecast s
9 are not that good.

10 MR. ROMANO: Can Ms. Gavalas be excused? Do we
11 foresee a need for her to testify further? She has
12 a plane flight, and if we need to --

13 JUDGE MORAN: I don't think so. I noticed she
14 wasn't able to answer something, does anyone have a
15 data request that they are putting out to her on any
16 of their questions? Hearing --

17 MR. REED: Staff would like to make an
18 on-the-record data request that Ms. Gavalas provide
19 for the Commission's edification the information
20 that would allow the Commission to determine the
21 number of calls that would be carried over OC 12.
22 And I'm assuming that OC 12, if multiplied by four

1 would constitute the number of calls carried on OC

2 48. If counsel has no objection to that.

3 MR. ROMANO: None. Would it be helpful perhaps
4 to provide it, I think we could put together a chart
5 showing the different levels for all facilities.

6 THE WITNESS: Right. Based upon the caveats of
7 what you estimate the duration of the calls to be,
8 we could definitely lay that out on how much one
9 would accommodate.

10 MR. ROMANO: No objection.

11 JUDGE MORAN: And if it can be provided within
12 the time that the hearing is still going, on we can
13 enter it of record.

14 THE WITNESS: For Monday.

15 MR. ROMANO: Certainly I can pull together a
16 letter today.

17 JUDGE MORAN: Otherwise it goes in as late filed.

18 MR. REED: Thank you, Madam Examiner.

19 JUDGE MORAN: Hearing nothing further, thank you
20 very much. And you are excused and you can fly
21 home. What do parties desire in terms of lunch? 45
22 minutes or an hour?

1 MR. ZABAN: We come back by 1:00 then we will be
2 ready to start by 1:15.

3 (Whereupon the above -entitled
4 matter was continued to July 14,
5 2000 at 1:00 p.m.)

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